

TC-02 Terms and Conditions for Fixed-Price, Non-U.S. Government Orders - GOODS & SERVICES (WORK)

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1. DEFINITIONS

As used throughout these terms and conditions (“**Terms and Conditions**”), the following terms shall have the meanings set forth below.

“Buyer” means GENERAL ATOMICS AERONAUTICAL SYSTEMS, INC.

“Buyer’s Authorized Procurement Representative” means the person(s) identified in the Order who is delegated with the procurement authority to execute and administer the Order.

“Goods” means those products, supplies, reports, computer software, hardware, data, materials, articles, items, parts, components or assemblies, as described in the Order.

“Industrial Participation Obligations” means the past, present and future industrial participation, co-production, and offset obligations or any similar obligations that Buyer undertakes, in order to market or sell its Work, and to meet other customer country national objectives.

“Order” means the instrument of contracting, such as “Purchase Order,” “PO,” “Subcontract,” or other such type designation, issued by Buyer to Seller, to which these Terms and Conditions are applicable, and all referenced documents, exhibits, attachments and amendments. If these Terms and Conditions are part of a “long term agreement,” “master agreement” or other “umbrella” type of agreement that provides for releases (in the form of a purchase order or other such document) the term Order shall also mean the release document(s) for which the Work is the subject matter.

“Party” means each of Buyer and Seller, and collectively “Parties.”

“Seller” means the person, firm, or corporation executing the Order with the Buyer and who will furnish the Work provided for herein. For purposes of the Independent Contractor clause herein only, “Seller” shall also include Seller’s agents, representatives, subcontractors, and suppliers at any tier.

“Services” means Seller’s, or its subcontractors or suppliers, time and effort to perform the tasks described in the Order.

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“Work” means Goods and Services together or Goods and/or Services, as applicable from the context of the Order.

2. HEADINGS

The division of these Terms and Conditions into clauses, and the insertion of headings are for convenience of reference only and shall not define, limit, or describe the scope or the intent of the Order nor shall they affect the construction or interpretation of these Terms and Conditions. The terms “these Terms and Conditions,” “hereof,” “hereunder,” and similar expressions in these Terms and Conditions refer to these Terms and Conditions and not to any particular clause or other portion and include any Terms and Conditions supplemental hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to clauses are to clauses of these Terms and Conditions.

3. INDEPENDENT CONTRACTOR

Seller is an independent contractor and not an agent or employee of Buyer either expressly or impliedly. The employees used by Seller to perform Work under the Order shall be Seller's employees exclusively without any relation whatsoever to Buyer. Seller assumes full responsibility for the actions and supervision of such personnel while engaged in Work under the Order, and Buyer assumes no liability for the actions of Seller's personnel. The Order will not constitute, create, give effect to, or imply a joint venture, teaming arrangement, partnership, formal business organization or any type of permanent relationship of any kind beyond the specific purposes stated herein. Nothing in the Order will grant to either Party the right to make commitments of any kind for, or on behalf of, the other Party.

4. PACKING AND SHIPMENT

- a. Seller shall be responsible for ensuring the proper packaging of Goods hereunder and shall include necessary boxing, crating, carting, marking, or storage, without additional charge, unless otherwise specified in the Order. Goods will be suitably packaged to secure the lowest transportation costs, in accordance with the requirements of common carriers and good commercial practices, and to ensure against damage from weather or transportation.
- b. Seller shall plainly mark Buyer's Order number on all invoices, packages, bills of lading and shipping orders. Seller shall mark packages with necessary lifting, loading and shipping information, including Buyer's Order number, dates of shipments and other relevant information. Packing lists will accompany each shipment showing materials. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5. DELIVERY, NOTICE OF DELAY

- a. Seller's timely performance is a critical element of the Order; thus if Seller fails to deliver in accordance with the delivery schedule under the Order, if unexcused by Buyer's Authorized Procurement Representative, Seller shall be considered in material breach of the Order.
- b. Unless otherwise noted in the Order or otherwise authorized in writing by Buyer's Authorized Procurement Representative, the date(s) of delivery will mean the date the Goods are scheduled to be delivered at Buyer's facility as set forth in the Order and Seller shall not deliver Goods prior to the scheduled delivery date(s) set forth in the Order, nor shall Seller deliver Goods in excess of the applicable quantities set forth in the Order. Additionally, unless otherwise noted in the Order or otherwise authorized in writing by Buyer's Authorized Procurement Representative, the date(s) of performance for the Services shall mean the applicable date(s) the Services are scheduled to be completed in accordance with the performance schedule and Seller shall not perform Services prior to the scheduled performance date(s) set forth in the Order.
- c. Notwithstanding, Buyer may authorize Seller to deliver Work early, but such authorization must be in writing. Work delivered prior to the scheduled delivery date set forth in the Order and without written authorization or in excess of the quantities specified in the Order may, at the Buyer's option, be retained by Buyer at no additional cost or early liability for costs, or returned to Seller. Seller shall be liable for all handling and return shipment costs for excess quantities. All performance of Services shall be strictly in accordance with the performance requirements of the Order.
- d. In the event of any anticipated or actual delay, including but not limited to delays attributed to labor disputes, Seller shall:
 - (i) promptly notify Buyer in writing of the reason(s) for the delay and the actions being taken to overcome or minimize the delay;
 - (ii) provide Buyer with a written recovery schedule; and

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- (iii) if requested by Buyer, ship Goods via air or other expedited routing or accelerate the Services, at no additional cost to Buyer, to avoid or minimize delay to the maximum extent possible.
- e. If Seller is unable to meet the required delivery and/or performance schedules for any reason, other than a change directed by Buyer, Buyer shall have the option to:
 - (i) terminate the Order,
 - (ii) fill the Order or any portion thereof, from sources other than Seller and reduce Seller's Order accordingly at no increase in unit price, and without any penalty to Buyer, or
 - (iii) accept late delivery and/or performance and recover from Seller any costs Buyer incurs as a result of the late delivery and/or performance.

This condition shall not limit Buyer's rights under the Termination clause contained herein.

6. ACCEPTANCE OF ORDER

- a. The Order is Buyer's offer to Seller. Seller's acceptance of the Order creates a binding contract between Buyer and Seller, which will be governed by the provisions of the Order. Acceptance of Buyer's offer is strictly limited to the Terms and Conditions in the Order. Any one of the following methods will constitute acceptance of the Order by Seller:
 - (i) acknowledgement in writing of acceptance;
 - (ii) commencement of performance, or
 - (iii) acceptance of payment.
- b. Modifications of the Order, to be binding, must be in writing and signed by Buyer's Authorized Procurement Representative. The rights and obligations described in the Order will survive completion and final payment of the Order.
- c. **ADDITIONAL OR DIFFERING TERMS OR CONDITIONS PROPOSED BY SELLER OR INCLUDED IN SELLER'S ACKNOWLEDGEMENT HEREOF ARE HEREBY OBJECTED TO BY BUYER AND HAVE NO EFFECT UNLESS EXPRESSLY ACCEPTED IN WRITING BY BUYER'S AUTHORIZED PROCUREMENT REPRESENTATIVE.**

7. TITLE AND RISK OF LOSS

Risk of loss will pass to Buyer in accordance with the shipping term set forth on the face of the Order, regardless of when or where Buyer takes physical possession. Title will pass to Buyer at the destination specified on the face of the Order, unless the Order provides for other passage of title either specifically or by choice of shipping term. Acceptance and passage of title shall not impair the right of Buyer to inspect and reject any item, and shall not relieve Seller of any other obligations under the Order.

8. PROPERTY

- a. For purposes of this "Property" clause, such Property will include:
 - (i) property and materials of the Buyer and the property and materials of its supplier that are provided by or otherwise furnished to the Seller by or on behalf of Buyer for performance of and to satisfy the requirements of the Order ("Buyer-Furnished Property"); and
 - (ii) property and materials which may be acquired by Seller for performance of and to satisfy the requirements of the Order ("Acquired Property").

Such Property shall also include any special tools, such as jigs, dies, fixtures, molds, patterns, and manufacturing aids ("Special Tools"). Acquired Property shall be priced separately and identified as such. Title shall pass to Buyer upon payment for such acquired Special Tools and other Property, and shall be properly identified by Seller as Buyer-Furnished Property. Seller will hold all Property in good condition, except for reasonable wear and tear, and return to Buyer at the completion of the Order unless Buyer directs Seller otherwise in writing. Seller shall only use Property for performance of and to satisfy the requirements of the Order and Property shall not be altered, unless Buyer otherwise consents in writing.

- b. Seller shall clearly mark, maintain in inventory, and keep segregated or identifiable all Buyer-Furnished Property and all Acquired Property. Buyer-Furnished Property will include Buyer's property and materials and the property and materials of its supplier, including such supplier's Special Tools, which Buyer furnishes under the Order. Title to Buyer-Furnished Property will remain with Buyer or its supplier. Seller shall be responsible for all loss or damage to Property except for normal wear and

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tear. Seller shall secure and maintain for the benefit of Buyer, insurance against any loss or damage of all Property in which Buyer has or acquires an interest hereunder. Seller's insurance coverage will be provided on an all risk basis and value will be at replacement cost. Upon request, Seller shall provide Buyer with adequate proof of insurance against such loss or damage.

- c. Seller shall, as required and requested by Buyer, conduct a physical inspection of the Property and promptly prepare a complete and thorough written inventory report containing the results of the physical inspection. Seller shall deliver such written inventory report to Buyers Authorized Procurement Representative within thirty (30) calendar days after completion of the inventory, but in no event later than forty-five (45) days after Buyer request. If, upon Buyer's demand to return any Property, Seller fails to return such Property, Buyer shall have the right, upon reasonable notice, to enter Seller's premises and remove any such Property without being liable for trespass or damages of any sort. Seller shall promptly report the loss of any Property to Buyer, in a written report, for all losses outside the normal process variation, such as losses due to theft, inadequate storage, lack of physical security, or "Acts of God." Seller shall have in place a property management and control system, which will provide adequate management control measures as a means of managing normal process variations. At all times, Buyer shall have access to Seller's facilities for the purpose of conducting periodic surveillance of or otherwise reviewing Seller's compliance with the management of all Property related to the Order.

9. PAYMENT

Payment due date and cash discount period are calculated from the later of the date of Buyer's receipt of an accurate invoice, the scheduled delivery date or the actual delivery date. Payment terms will be set forth on the face of the Order. Payment is deemed made on the date Buyer's check is mailed or payment is otherwise tendered in United States dollars. Seller shall promptly repay Buyer any amounts paid in excess of amounts due Seller. Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer against any amount payable by Buyer to Seller.

10. RESERVED**11. RESERVED****12. RESERVED****13. INSPECTION**

Buyer shall be permitted, at no additional cost, to inspect Seller's applicable facilities and plants, including Seller's manufacturing, fabrication, distribution, warehouse and testing facilities, and to inspect and test Work on a non-interference basis, at reasonable times and places, during manufacture, performance and before shipment in order to review, evaluate and assess progress and performance under the Order. Seller shall flow such inspection rights to its subcontractors to allow Buyer the same inspection rights for Seller's subcontractors. Such inspections will include, at Buyer's option, Seller's applicable facilities, including manufacturing, fabrication, distribution, warehouse and testing facilities. Whether or not inspections, tests, reviews, evaluations, or such other activities, including design or planning reviews, are performed by Buyer, Seller shall not be relieved from responsibility to perform all inspections, tests and quality assurance measures to comply with the requirements of the Order.

14. ACCEPTANCE OR REJECTION OF WORK

- a. Buyer shall accept the Work or give Seller notice of rejection due to any defect or nonconformance within a reasonable time after the date of delivery of Goods to Buyer or performance of the Services. No payment, prior test, inspection, passage of title, any failure or delay in performing any of the foregoing, or failure to discover any defect or other nonconformance will relieve Seller of any obligations under the Order or impair any rights or remedies of Buyer, including revocation of acceptance. The Buyer's right of rejection contained in this Acceptance or Rejection of Work clause is in addition to and shall not in any way impact or replace Buyer's rights as set forth in the Warranty clause contained herein.
- b. If Seller delivers defective or non-conforming Work, Buyer may at its option and at Seller's expense:
- (i) require Seller to promptly correct or replace all or a portion of the Work;
 - (ii) return or reject all or part of the Work for credit or refund; or
 - (iii) obtain replacement Work from another source and Seller shall be responsible for such reprocurement costs.

Return to Seller of defective or non-conforming Work and redelivery to Buyer of corrected or replaced Work shall be at Seller's expense.

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- c. Seller shall not redeliver corrected or rejected Work without disclosing the former rejection or requirement for correction. Seller shall disclose any corrective action taken. Repair, replacement, and other correction and redelivery shall be completed as Buyer may reasonably direct.

15. WARRANTY

- a. Seller warrants that, for a one (1) year period after acceptance of Work by Buyer, all Work furnished under the Order will:
 - (i) be new and merchantable,
 - (ii) be free from defects in design, material and workmanship,
 - (iii) conform to all requirements of the Order, including drawings, samples, or other description applicable under the Order,
 - (iv) if ordered to specifications, conform to the specifications, and
 - (v) if Services, be performed with the degree of professional skill, sound practices and judgment which is normally exercised by recognized professional firms with respect to services of a similar nature.

This warranty will begin upon acceptance pursuant to the Acceptance or Rejection of Work clause and will survive inspection, test and payment for the Work. Work required to be repaired, replaced or corrected will be subject to the requirements of the Order in the same manner and to the same extent as Work originally delivered under the Order.

- b. If any Goods fail to comply in any respect to the warranty set forth above, Seller shall, at Buyer's option and in a time frame reasonable determined by Buyer, promptly repair or replace the Goods. Return of defective or nonconforming Goods and transportation of replacement Goods will be at Seller's expense. If repair or replacement of Goods is not timely, Buyer may elect to return, repair, rework, replace, or re-procure the defective or nonconforming Goods, as Buyer deems applicable, at Seller's expense.
- c. If any Services fail to comply in any respect to the warranty set forth above, Seller shall, at Buyer's option and in a time frame reasonable determined by Buyer, promptly correct or re-perform the Services. If correction or re-performance of Services is not timely, Buyer may elect to correct, re-perform or re-procure the defective or nonconforming Services, as Buyer deems applicable, at Seller's expense.
- d. All statutory warranties will apply. Warranties will run to Buyer, its successors, assigns, and customers.

16. COUNTERFEIT GOODS

- a. "Counterfeit Goods" mean Goods or separately identifiable items or components of Goods that:
 - (i) are an unauthorized copy or substitute of an original equipment manufacturer or original component manufacturer (collectively, "OEM") item;
 - (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture;
 - (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design;
 - (iv) have been reworked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but not disclosed as such or are represented as OEM authentic or new; or
 - (v) have not passed successfully all OEM required testing, verification, screening, and quality control processes.
- b. Seller shall not deliver Counterfeit Goods or suspected Counterfeit Goods to Buyer under the Order. Counterfeit Goods are deemed nonconforming to the Order.
- c. Notwithstanding the foregoing, Goods or items that contain modifications, repairs, re-work, or re-marking as a result of Seller's or its subcontractor's design authority, material review procedures, quality control processes or parts management plans, and that have not been misrepresented or mismarked, will not be deemed Counterfeit Goods.
- d. Seller shall implement an appropriate strategy to ensure that Goods furnished to Buyer under the Order are not Counterfeit Goods. Seller's strategy will include, but not be limited to, the direct procurement of items from OEMs or authorized suppliers, conducting approved testing or inspection to ensure the authenticity of items, and, when items are to be procured from non-OEM suppliers, obtaining from such non-OEM suppliers appropriate certificates of conformance that provide one or more of the following:

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- (i) the OEM's original certificate of conformance for the item;
- (ii) sufficient records providing unbroken supply chain traceability to the OEM; or
- (iii) test and inspection records demonstrating the item's authenticity.

Seller shall provide authenticity and traceability records to Buyer upon request.

- e. If Seller becomes aware or suspects that it has furnished Counterfeit Goods to Buyer under the Order, Seller shall promptly notify Buyer, in writing, and, at Seller's expense and in no case later than thirty (30) days from discovery, replace such Counterfeit Goods with OEM or Buyer-approved Goods that conform to the requirements of the Order. Seller shall be liable for all costs related to the replacement of Counterfeit Goods and any testing or validation necessitated by the installation of authentic Goods after Counterfeit Goods have been replaced.
- f. Seller bears responsibility for procuring authentic Goods or items from its subcontractors, and shall ensure that all such subcontractors comply with the requirements of this Counterfeit Goods clause.

17. DIMINISHING MANUFACTURING SOURCES

- a. Seller shall notify Buyer with all necessary details as soon as Seller becomes aware of any Diminishing Manufacturing Sources and Material Shortage (DMSMS) issue regarding the Work including any of the following which are out of production, going out of production, no longer commercially available, whether supplied by the Seller or by the Seller's lower-tier subcontractor(s):
 - (i) items, materials, parts, subcomponents, and/or components;
 - (ii) electronics in equipment, assemblies, subassemblies, parts, components or items delivered or to be delivered under the Order, and/or
 - (iii) repair services
- b. Seller shall notify Buyer with a "last time buy" (LTB) notice for such "end-of-life"(EOL) items as soon as Seller is aware or at least twelve (12) months prior to their anticipated date of discontinuance or unavailability. To the extent practicable, Seller will continue to provide LTB or EOL notifications after the last delivery of Goods to Buyer. Seller shall specifically identify those items by name or title, part number(s), function, where used in the item, and the name and address of the manufacturer, if other than the Seller. Seller shall take all reasonable steps to investigate an alternate, similar or replacement part.
- c. All notifications required from Seller to Buyer under this Diminishing Manufacturing Sources clause will be given in writing to Buyer's Authorized Procurement Representative and a copy will be sent, via email, to DL-AS-Obsolescence-Mgmt@ga.com.

18. CHANGES

- a. Buyer's Authorized Procurement Representative may, at any time, issue written directions to Seller requiring changes within the general scope of work being performed under the Order; including but not limited to, changes to:
 - (i) drawings, designs, specifications, planning, and/or other technical documents;
 - (ii) method of shipment, packaging, or packing;
 - (iii) place of delivery.

Seller shall proceed with the work as directed.

- b. If any such direction results in a material change in the amount or character of the work under the Order, an equitable adjustment in the Order price and other such provisions of the Order as may be affected shall be made and the Order shall be modified in writing accordingly. Any claim by Seller for an adjustment under this Changes clause must be:
 - (i) asserted in writing, and delivered to Buyer, within fifteen (15) calendar days from the date of receipt by Seller of the notification of change, and
 - (ii) a fully supported proposal delivered to Buyer within thirty (30) calendar days after Seller's receipt of such direction.

Seller shall provide additional documentation as reasonably requested by Buyer to support the amount of Seller's claim for equitable adjustment to meet Buyer's Prime Contract requirements. Whether made pursuant to the Changes clause or by mutual agreement, changes shall not be binding upon Buyer until Buyer agrees in writing, as set forth in the Writings Required clause herein.

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- c. The issuance of information, advice, approvals, assistance or instructions by Buyer's technical personnel or other representatives will be deemed expressions of personal opinions only and no such action shall be deemed to be a change under this Changes clause, and will not be the basis for any equitable adjustment. Furthermore, such expressions of personal opinions will not constitute a modification or change to the Order.
- d. Failure to agree to any adjustment will be a dispute within the meaning of the Disputes clause herein.

19. QUALITY CONTROL

- a. Seller shall have and maintain throughout the period of performance of the Order, a quality management system approved by and acceptable to Buyer and that meets industry recognized quality standards and complies with the quality clauses or requirements specified in the Order. Seller shall permit Buyer, its authorized customer representatives, and regulatory authorities access to its facilities at all reasonable times to review Seller's procedures, practices, processes and related documents to determine Seller's compliance with the quality management system that was approved and accepted by the Buyer. Seller shall keep and maintain current and complete records of all Seller reviews, inspections, or other surveillance of its quality management system. Such quality records shall be made available to Buyer promptly upon request.
- b. Seller shall have a continuing obligation to promptly notify Buyer of any known or reasonably suspected violation of or deviation from Seller's approved quality management system and to promptly advise Buyer of the quantity and specific identity of any Work delivered to Buyer that may be affected. Seller agrees to identify and inform Buyer of processes for selecting, qualifying and managing its subcontractors or suppliers, managing product and processes, flowing down applicable requirements to its subcontractors or suppliers, and assessing its subcontractors or suppliers capabilities for compliance.

20. WRITINGS REQUIRED; APPLICABLE LANGUAGE

No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order will bind either Party unless provided in writing. No oral statement of any person whatsoever will in any manner or degree modify or otherwise affect the terms of the Order. No extra charge of any kind, or change in the price or schedule of the Order will be allowed unless specifically agreed to in writing and signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller. The Parties agree that the Order, as well as all contractual documents, correspondence, invoices, notice, and other documents, whether technical or non-technical in nature, will be used and delivered in American English. Any conversations and communications shall be in English. Measurements shall be employed in the unit of measure customarily used by Buyer in the United States of America, unless otherwise specified by Buyer in writing.

21. RECORDS

Seller agrees that its non-financial books, documents, papers and records pertaining to the manufacturing, distribution, warehouse or other facilities, or such part of any manufacturing plant or distribution or warehouse or other facilities as may be engaged in the performance of the Order shall be subject to examination at reasonable times by any person designated by Buyer. Such records shall include, but shall not be limited to, specifications, production, inspection, test, quality, shipping and export, certifications, receipt records, and inventory records. Such books and records shall date back to the time the Order was issued, and shall be maintained by Seller for a period of five (5) years after final payment is made under the Order.

22. STOP WORK ORDER

- a. Buyer's Authorized Procurement Representative may, at any time, by written notice to Seller issue a Stop Work Order (SWO) requiring Seller to stop all or part of the Work called for by the Order for a period of one hundred twenty (120) days. Seller shall immediately comply with the SWO, and take all reasonable steps to minimize incurring costs allocable to the Work covered by the SWO during the period of work stoppage. Seller shall continue all Work not directly covered by the SWO.
- b. Within one hundred twenty (120) days after the SWO is delivered to Seller, Buyer shall either:
 - (i) extend the SWO,
 - (ii) withdraw the notice and direct Seller to resume the Work, or
 - (iii) terminate the Work and the Order, or part thereof, pursuant to the appropriate provision of the Order.
- c. Buyer and Seller shall negotiate an equitable adjustment in the price or schedule or both if:
 - (i) the Order is not canceled or terminated;

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- (ii) the suspension results in a change in Seller's cost of performance or ability to meet the Order delivery and/or performance schedule; and
- (iii) Seller submits a claim for adjustment within thirty (30) days after the end of the period of work stoppage, provided; however, Seller shall not be entitled to any equitable adjustment for any SWO issued due to Seller's performance problems under the Order.

23. TERMINATION

The following clauses set forth Buyer's termination rights under the Order:

- a. Buyer may, by written notice as set forth in Subsection c. below, terminate Seller pursuant to this Subsection a. of the Termination clause for any one or more of the following reasons:
 - (i) Seller fails to deliver the Work within the time specified by the Order or any written extension; or
 - (ii) Seller fails to comply with any provision of the Order or fails to make progress, so as to endanger performance of the Order, and, in either of these two circumstances, within ten (10) business days after receipt of notice from Buyer specifying the failure, does not cure the failure or obtain Buyer approval of a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) business days; or
 - (iii) Seller becomes subject to bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any unauthorized assignment, reorganization, or arrangement by Seller for the benefit of its creditors.

In the event Buyer terminates the Order in whole or in part pursuant to this Subsection a, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, Work similar to the Work so terminated, and Seller shall be liable to Buyer for any excess costs for such replacement Work. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any

- (i) completed Work, and
- (ii) any partially completed Work and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the terminated portion of the Order.

Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest. Buyer shall pay the Order price for completed and accepted Work. In addition, any payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be in an amount agreed upon by Buyer and Seller. Buyer may withhold from any amount due under the Order any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders.

- b. Buyer may, by written notice as set forth in Subsection c below, terminate Seller at any time pursuant to this Subsection b if Buyer's Authorized Procurement Representative determines that such termination is in the Buyer's interest. Subject to the terms of the Order, within ninety (90) calendar days after the effective date of termination under this Subsection b of the Termination clause, Seller may submit to Buyer a claim reflecting the percentage of the Work performed prior to the effective date of such termination, plus substantiated costs that Seller can demonstrate to the satisfaction of Buyer have resulted from such termination. Seller shall not be paid for any Work performed or costs incurred which reasonably could have been avoided. Further, Seller shall not be paid, and in no event shall Buyer be obligated to pay, lost or anticipated profits or unabsorbed indirect costs or overhead or any amount in excess of the aggregate Order price. A termination of Seller by Buyer pursuant to this Subsection b shall not limit or affect the right of Buyer to thereafter terminate all or a part of the Order pursuant to Subsection a.
- c. In order to conduct a termination under Subsections a and/or b of this Termination clause, Buyer's Authorized Procurement Representative must deliver to Seller a written notice of termination specifying whether the termination is being conducted pursuant to Subsection a or b above, the extent of such termination, and the effective date.
- d. In the event of a termination pursuant to this Termination clause, Seller shall immediately discontinue all terminated Work hereunder and shall immediately cause any and all of its suppliers and/or subcontractors to terminate such Work. Seller shall take any necessary action to protect property in Seller's possession in which Buyer has an interest, and direct its subcontractors to do the same.

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- e. Seller agrees to continue working on all Work not terminated under this Termination clause. The rights and remedies of Buyer provided in this Termination clause will not be exclusive and are in addition to any others provided by law or the Order.

24. RESERVED

25. PROPRIETARY INFORMATION

- a. Buyer and Seller shall each keep confidential and protect from unauthorized use and disclosure, during the term of the Order, and for a period of twenty (20) years thereafter:
 - (i) confidential, proprietary and/or trade secret information disclosed in connection with the Order, whether disclosed orally or visually and identified as confidential or proprietary at the time the information was disclosed, or in writing, electronically or in other tangible form, including Buyer-provided specifications and Buyer-provided information pertaining to qualification, certification, manufacturing, and/or quality testing and procedures;
 - (ii) tangible items and software containing, conveying or embodying such information disclosed in connection with the Order; and
 - (iii) tooling for the Order that is obtained, directly or indirectly, from the other, including Buyer's customer, disclosed in connection with the Order. The foregoing information described in (i), (ii) and (iii) collectively referred to as "Proprietary Information").
- b. Buyer and Seller
 - (i) shall only use the Proprietary Information in the performance and for the purpose of the Order,
 - (ii) shall comply with all proper proprietary markings and restrictive legends applied by a disclosing Party, and
 - (iii) shall maintain appropriate processes and systems to adequately protect a disclosing Party's Proprietary Information provided hereunder.

Buyer shall have the right to use, disclose, reproduce and make derivative works of Seller's Proprietary Information for the purposes of testing, certification, use, sale or support of any Work delivered under the Order. Any such use, disclosure, reproduction or derivative work by Buyer shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. Seller may disclose Proprietary Information of Buyer to its subcontractors as required for the performance of the Order, provided that each such subcontractor first agrees in writing to obligations no less restrictive than those imposed upon Seller under the Order. Seller shall be liable to Buyer for any breach of such obligation by its subcontractors. Further, Seller shall give written notice within five (5) business days to Buyer at such time as it becomes aware of an unauthorized use or disclosure by its employees or subcontractors of Buyer's Proprietary Information and shall take reasonable actions to promptly correct the unauthorized use or disclosure.

- c. If Buyer or Seller, as a receiving Party, is legally required to disclose any Proprietary Information other than as set forth in this clause, it will give the disclosing Party prompt written notice of the request prior to such disclosure, and use its best efforts to limit disclosure and to obtain confidential treatment or a protective order and allow, to the fullest extent possible, the disclosing Party to participate in the proceeding. If the receiving Party is nonetheless compelled to disclose any Proprietary Information, the receiving Party may disclose such Proprietary Information solely to the minimal extent necessary to comply with the legal requirement.
- d. Buyer and Seller shall take all reasonable measures to protect each other's Proprietary Information, which measures shall be at least equal to those with which a Party uses to protect its own confidential or proprietary information, and with no less than reasonable care.
- e. Seller agrees to retain in confidence and return to Buyer on completion, termination or cancellation of the Order, all Buyer's Proprietary Information, including designs, drawings, specifications, and technical information of every kind furnished to Seller in connection with the Order, unless specifically directed otherwise in writing by Buyer.
- f. The obligations of this Proprietary Information clause will not apply to any Proprietary Information that a receiving Party can demonstrate
 - (i) was in the receiving Party's rightful possession free of any obligation of confidence prior to its first receipt from disclosing Party,

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- (ii) is publicly known through no fault of the receiving Party (except that information will not be deemed to be publicly known simply because a portion thereof is embodied in a general disclosure or because individual features, components or combinations thereof are known to the public),
 - (iii) is obtained from a third person who had a right to disclose it, or
 - (iv) was independently developed without access to any Proprietary Information of the disclosing Party.
- g. The Parties' obligations associated with this clause shall survive any expiration or termination of the Order, provided that the receiving Party shall have no further right to use or disclose any Proprietary Information of the disclosing Party.

26. INTELLECTUAL PROPERTY

a. Definitions:

“Intellectual Property” or “IP” means inventions, discoveries and improvements, concepts, products, ideas, know-how, technical data, copyrightable materials, copyrights, service marks, trademarks, trade names, drawings, specifications, process information, reports and documented information, computer software, patents, industrial designs, trade secrets, mask work registrations, and the like. Each Party will retain all right, title and interest to its own Intellectual Property.

“Background IP” means all Intellectual Property conceived, originated, created or first reduced to practice by a Party prior to the period of performance of the Order or outside the scope of the Order.

“Foreground IP” means Intellectual Property conceived, developed or first reduced to practice by, for or with a Party either alone or with others in the performance of the Order.

- b. Except as otherwise specifically agreed to in the Order or these Terms and Conditions, if the Order is for, or includes, experimental, development, or research work, all Intellectual Property conceived, originated, created or first reduced to practice by Seller prior to the period of performance of the Order will remain the property of the Seller (“Seller’s Background IP”). All Intellectual Property conceived, originated, created or first reduced to practice by or for Buyer prior to the date of the Order will remain the property of the Buyer (“Buyer Background IP”). Seller hereby grants to Buyer an irrevocable, nonexclusive, transferable, perpetual, paid-up, royalty-free, worldwide license
- (i) to use, reproduce, distribute, modify, and prepare derivative works of Seller’s Background IP and
 - (ii) to use, make, have made, offer for sale, sell, distribute and import products and services that incorporate or embody Seller’s Background IP; in each case solely as necessary for the purpose of allowing Buyer to fully exploit its rights in the Work and Foreground IP or if such would otherwise interfere with Buyer or Buyer’s subcontractors’, supplier’, or customers use and enjoyment of the Work or Foreground IP.

Seller grants to Buyer such license rights in the event Buyer cancels all or part of the Order for Seller’s default in accordance with the Termination clause of these Terms and Conditions.

- c. Buyer will have title to and ownership of all Foreground IP conceived, originated, created or first reduced to practice by Seller. Seller shall promptly notify Buyer in writing of all Foreground IP. All Foreground IP will be the exclusive property of the Buyer.
- d. All Buyer’s Background IP and Buyer’s Foreground IP will remain the property of Buyer even if provided to Seller for its performance of or for the purpose of the Order.
- e. Seller shall indemnify and hold harmless, and, at Buyer’s election, defend Buyer, Buyer’s officers, affiliates, agents, employees, and customers from and against all suits or actions, losses, damages, claims, and liabilities, including costs and expenses, attorney’s fees, and cost of litigation/settlement, judgments, liens, court costs, and awards for any asserted or actual trademark, copyright, or patent infringement or other asserted or actual violations of the intellectual property rights of a third party arising out of or resulting from the manufacture, use, or sale of any Work furnished or delivered to Buyer under the Order. If an injunction is obtained against Buyer’s use of the Work or a portion thereof as a result of infringement or misappropriation of the intellectual property of any third party, Seller shall either
- (i) procure for Buyer and its customer the right to continue using the Work or
 - (ii) replace or modify the Work so it becomes non-infringing.

This indemnity and hold harmless provision shall not be considered an allowable cost under any provisions of the Order except with regard to allowable insurance costs.

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- f. Seller's personnel, and if the Order also includes contract labor, then contract laborers, shall execute an inventions and copyright agreement under which all Work performed by Seller personnel or contract laborers under the Order shall be construed as Work performed by employees of Buyer, and Seller shall require its personnel and contract laborers to execute such acknowledgment form as is requested by Buyer.
- g. All works of authorship (including, but not limited to, documents, data, drawings, software, software documentation, photographs, video tapes, sound recordings, and images) created by, for, or with Seller in the course of any Work performed under the Order, together with all copyrights subsisting therein, shall be the sole property of Buyer. To the extent permitted under United States copyright law, all such Work will be "works made for hire," with the copyrights therein vesting in Buyer. The copyrights in all other such Work, including all of the exclusive rights therein, will be promptly transferred and formally assigned free of any additional charges to Buyer.

27. ADVERTISING, USE OF NAME

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer the Work provided for in the Order. Seller shall require that its subcontractors at any tier adhere to this same policy, and shall be responsible for any breach of such obligation by any of its subcontractors. Seller agrees that it shall not use the Buyer's name or logo, nor any adaptation or variation thereof, in any manner whatsoever (including, but not limited to, website(s), press releases, reference lists, or similar public announcements concerning the Order or projects contemplated by the Order), without the Buyer's prior written consent in each instance.

28. RESERVED

29. INSURANCE AND PRECAUTIONS

- a. Insurance: Seller shall procure and maintain during the term of the Order, and at its expense, insurance in sufficient amounts to ensure its obligations and liabilities hereunder. Such insurance shall include at a minimum the following:
 - (i) Automobile liability insurance coverage for all owned, non-owned and hired vehicles protecting the Seller from automobile bodily injury and property damage liability with limits of at least \$1,000,000 per occurrence.
 - (ii) Commercial general liability insurance which includes broad form contractual, property damage, products/completed operations, personal injury, premises-operations, independent contractors and subcontractors. Coverage will be on a per occurrence basis with limits of liability no lower than \$1,000,000 per occurrence and \$1,000,000 general aggregate.
 - (iii) Such insurance of employees as may be required by any workers' compensation act or other law, regulation or ordinance which may apply in the circumstances, including employer's liability coverage for injury, disease and death, with coverage limits of not less than \$1,000,000 per accident and employee.
- b. For (a)(ii) above, such policies will name Buyer as additional insured when requested by Buyer.
- c. Certificates of Insurance: Upon Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller. The Seller shall provide an endorsement on each policy in (a) above providing that Buyer shall receive 30 days prior written notification from the insurer of any termination or cancellation of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Order.
- d. Self-Assumption: Any self-insured retention, deductibles and exclusions in coverage in the policies required under this Insurance and Precautions clause will be assumed by, for the account of and at the sole risk of Seller or its subcontractor which provides the insurance and, to the extent applicable, will be paid by Seller or its subcontractor. In no event will the liability of Seller or any of its subcontractors thereof be limited to the extent of any of the minimum limits of insurance required herein.
- e. Protection of Property: If Seller's work under the Order involves operations by Seller on Buyer's or its customer's premises, Seller agrees to comply with all the rules and regulations established by Buyer for access to and activities in and around premises controlled by Buyer or Buyer's customer, and take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all fines, penalties, or loss incurred by reason of failure to comply with this Insurance and Precautions clause.

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30. INDEMNIFICATION

- a. Seller shall indemnify, defend, and hold harmless Buyer, Buyer's officers, affiliates, agents, employees, and customers against all suits or actions, losses, damages, claims and liabilities, including costs and expenses, attorney's fees and cost of litigation/settlement, judgments, liens, court costs, and awards for:
 - (i) any breach of representations, certifications, and warranty of Seller hereunder, and
 - (ii) damages of any kind and nature whatsoever incurred by Buyer or any third party for property damage, personal injury or death (including without limitation injury to or death of employees of Seller or any subcontractor thereof), as a result of, arising out of or in any way related to any act or omission of the Seller's officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under the Order.
- b. Buyer shall notify Seller in writing of such claim and Buyer shall provide Seller with reasonably necessary information and assistance, at Seller's expense, for the defense thereof.

31. TAXES

- a. Unless Buyer furnishes a valid exemption certificate or other similar evidence of exemption for the taxing jurisdiction in question, Buyer will bear all timely and applicable sales, use, or similar taxes now or hereafter properly imposed on Buyer in respect to the Order or transaction.
- b. Seller agrees to notify Buyer promptly of any proposed or contemplated assessment of additional taxes to be borne by Buyer under subparagraph (a) of this Taxes clause as the result of an audit or other tax review by an applicable governmental agency, prior to payment of such proposed additional taxes. Buyer's obligation to pay such additional tax is subject to such notification permitting Buyer to review the findings of the alleged tax increase prior to payment.
- c. Seller further agrees to take all steps necessary (as requested by Buyer, on account of Buyer, and in cooperation with Buyer) to secure any applicable refunds of any such taxes borne by Buyer under subparagraph (a) of this Taxes clause when such taxes paid by Buyer in whole or in part are subsequently deemed inapplicable.

32. RESERVED

33. FORCE MAJEURE

- a. Neither Seller nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to any cause beyond their commercially reasonable control and without their fault or negligence which cause prevents a Party from performing its obligations under the Order or results in the inability of a Party to perform its obligations under the Order. Such causes include, but are not limited to:
 - (i) acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, epidemics, terrorism, quarantine restrictions, freight embargoes, or unusually severe weather affecting either party; or
 - (ii) similar causes beyond their commercially reasonable control and which are not foreseeable or causes beyond the commercially reasonable control of their subcontractors which are not foreseeable.
- b. The Party whose performance is so affected shall notify the other Party in writing within ten (10) days after the beginning of any such cause(s). In all cases, the Parties shall use reasonable efforts to avoid or minimize all such failures or delay in performing their obligations hereunder, including exercising work-around plans or obtaining the Work from other sources.

34. COMPLIANCE WITH LAWS

Seller agrees that in performing its duties under the Order, Seller shall comply with all applicable Federal, State, foreign and local laws, statutes, ordinances, and regulations in effect on the date of the Order. Seller represents and warrants that neither Seller nor any of its principals, consultants, subcontractors, shareholders, directors, officers, employees or agents has performed or will perform any act, which would constitute a violation of the requirements set forth in this Compliance with Laws clause. If at any time Seller becomes aware of information or circumstances that suggest this representation and warranty may not be accurate, it shall notify Buyer immediately in writing, but not more than seven (7) calendar days after becoming aware of such circumstances.

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35. EXPORT CONTROLS

- a. Information exchanged pursuant to the Order may include the use of, or access to, Technical Data or Defense Services (as defined in the Export Regulations defined herein) that is subject to export controls under 22 Code of Federal Regulations 120 – 130 (International Traffic in Arms Regulations) or 15 Code of Federal Regulations 768 -799 (Export Administration Regulations) and their successor and supplemental laws and regulations (collectively hereinafter referred to as “Export Regulations”). U.S. Law prohibits the transfer or export of Technical Data or Defense Services without an export license to any employee or other person who is not a United States Citizen or Permanent Resident Alien, as well as to corporations or to any other entity, organization or group that is not incorporated or otherwise organized to do business in the United States.
- b. Seller shall comply with all “Export Regulations” of the United States Government and the government of any country in which the Buyer or Seller conduct business pursuant to the Order. In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary, significant delay in obtaining them), Seller shall immediately notify Buyer’s Authorized Procurement Representative.
- c. Seller shall indemnify and save harmless Buyer from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney fees, arising out of claims, suit, allegations or charges of Seller’s failure to comply with all applicable “Export Regulations” of the United States. Any failure of Seller to comply with the provisions of this Export Controls clause shall be a material breach of the Order. Seller acknowledges that it will be responsible for ensuring that all U.S. Government export control requirements will be conveyed to all sub-tier suppliers or subcontractors that will be provided or may have access to Technical Data or Defense Services provided under the Order.

36. INDUSTRIAL PARTICIPATION OBLIGATIONS

- a. Notwithstanding that the Order may or may not be issued in direct support of a foreign sale, Seller agrees to support Buyer’s Industrial Participation Obligations.
- b. To the exclusion of all others, Seller agrees that Buyer, its subsidiaries, affiliates or its designees may use the value of the Order to satisfy Industrial Participation Obligations that Buyer may have with Seller’s country. Seller shall provide documentation or information which Buyer or its assignees may reasonably request to substantiate claims for industrial benefits or Industrial Participation Obligations credits.
- c. Seller agrees to identify and retain for Buyer’s use any Industrial Participation Obligations credits generated from the content of Work which Seller either produces itself and/or procures from suppliers for work arising out of or related to the Order. Promptly after selection of a non-U.S. supplier for work under the Order, Seller shall notify Buyer of the name, address, supplier point of contact (including telephone number) and dollar value of the subcontract. To the exclusion of all others, Seller agrees that Buyer, its subsidiaries, affiliates or its designees may use the value of such credits to satisfy Industrial Participation Obligations that Buyer may have.
- d. Buyer reserves the right to assign Industrial Participation Obligation credits generated through Seller’s efforts under the Order to third parties.
- e. Seller shall include the substance of this Industrial Participation Obligations clause, in favor of Buyer, in its subcontracts issued at all tiers pursuant to the Order.

37. COMMUNICATIONS

Except as required by law, Buyer shall be solely responsible for all liaison and coordination with Buyer’s customer. Seller shall not communicate with Buyer’s customer, without Buyer’s prior written consent.

38. ASSIGNMENTS, CHANGES TO NAME AND PLACE OF MANUFACTURE

- a. Seller will not assign or transfer the Order, including by operation of law, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of Buyer. In the event written consent is granted, Seller shall promptly supply Buyer with documentation supporting any such assignment.
- b. Payment to an assignee of any claim hereunder will be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.
- c. Seller shall provide prior written notice to Buyer of any proposed name changes, mergers or acquisitions affecting the Order. Seller shall not change the location of manufacture of the Goods or performance of the Services to be provided to Buyer under

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the Order or the place of performance of any Work without first providing at least ninety (90) days written notice to Buyer prior to the date of initiation of the relocation activity and obtaining Buyer's prior written consent.

39. DISPUTES

- a. All disputes between Buyer and Seller, under the Order will be submitted in writing for resolution through mutual agreement to ascending levels of management of the respective Parties. If the Parties' ascending levels of management are unable, after good faith efforts, to settle the dispute within sixty (60) calendar days after the dispute is submitted in writing, or such later date as the Buyer and the Seller may have agreed in writing, either Party may submit the dispute to a court of competent jurisdiction. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES TO WAIVE ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.** Notwithstanding the above, either Party may seek injunctive or other equitable relief, at any time, in any court of competent jurisdiction.
- b. Pending final resolution of any dispute, Seller shall proceed with performance under the Order unless otherwise instructed by Buyer. The rights and obligations of this clause shall survive completion of and final payment under the Order.

40. APPLICABLE LAWS

The Order and any dispute arising hereunder will be governed by the laws of the state of California, without regard to its conflicts of law provisions. Jurisdiction and venue will lie in the State of California. The 1980 U.N. Convention on Contracts for the International Sale of Goods will not apply to any sales transactions governed by these terms and conditions.

41. NON-WAIVER

The failure of either Party to insist, in one or more instances upon performance or to exercise any rights will not waive or relinquish to any extent such Party's right to assert or rely upon any such terms or rights on any future occasion.

42. ENTIRE AGREEMENT

These Terms and Conditions and those referenced on the face of the Order to which this form is attached, including other specifications or documents incorporated by reference, constitute the complete and exclusive agreement between Buyer and Seller, and supersede all previous negotiations, discussions, communications, representations, agreements, arrangements or understandings, whether written or oral, between the Parties related to the subject matter of the Order. No course of prior dealings between the Buyer or Seller, and no usage of trade, will be relevant to supplement or explain any term used in the Order. No agreement or understanding varying or extending the terms or conditions of the Order will be binding unless executed in writing by Buyer's Authorized Procurement Representative. If any provision of the Order is declared to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remainder of the provisions in the Order will remain valid, enforceable and in full force and effect, and the Parties will negotiate in good faith to substitute a provision of like economic intent and effect.

43. SURVIVABILITY

Seller's obligations that, by their very nature, must survive expiration, termination, or completion of the Order, shall survive expiration, termination, or completion of the Order, including, but not limited to, obligations under the following: Applicable Laws, Diminishing Manufacturing Sources, Disputes, Export Controls, Indemnification, Intellectual Property, Proprietary Information, Records, and Warranty.

44. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Seller represents, after conducting a reasonable inquiry, that it will not provide to Buyer, or use, telecommunications equipment or services in the performance of the Order that is produced or provided by Huawei Technologies Company, or any subsidiary or affiliate of those entities, and video surveillance products or telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company, or any subsidiary or affiliate of those entities, owned or controlled by the People's Republic of China. Seller agrees to contact Buyer's authorized purchasing representative immediately in the event Seller is not able to fully comply with this representation. Buyer reserves the right to enhance or minimize this representation pursuant to changes to Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.